



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2016-0496; FRL-9989-28-Region 5]

Air Plan Disapproval; Wisconsin;

Redesignation Request for the Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin Area to Attainment of the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove an August 15, 2016, request from Wisconsin to redesignate the Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin (IL-IN-WI) ozone nonattainment area (Chicago nonattainment area) to attainment of the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) because the area is violating the standard with 2015-2017 monitoring data. EPA is also proposing to disapprove Wisconsin's maintenance plans and Motor Vehicle Emissions Budgets (MVEBs), submitted with the State's redesignation request, since approval of these State Implementation Plan (SIP) components is contingent on attainment of the ozone standard. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry and Will Counties, Aux Sable and Goose Lake Townships in Grundy

County, and Oswego Township in Kendall County in Illinois; Lake and Porter Counties in Indiana; and the area east of and including the corridor of Interstate 94 in Kenosha County, Wisconsin.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2016-0496 at <http://www.regulations.gov> or via email to aburano.douglas@epa.gov. For comments submitted at [Regulations.gov](http://www.Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.Regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA

public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, dagostino.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What actions is EPA proposing?
- II. What is the background for these actions?
- III. What are the criteria for redesignation to attainment?
- IV. What is EPA's analysis of the State's request?
- V. Statutory and executive order reviews.

I. What actions is EPA proposing?

EPA is proposing to disapprove Wisconsin's August 15, 2016, request to redesignate the Wisconsin portion of the Chicago nonattainment area to attainment for the 2008 ozone standard because the Chicago nonattainment area continues to violate this standard based on the most recent three years (2015-2017) of quality-assured, certified air quality monitoring data. Because this area continues to violate the 2008 ozone NAAQS, we are also

proposing to disapprove the ozone maintenance plans and MVEBs included in the State's submittal.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.075 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. See 40 CFR 50.15 and appendix P to 40 CFR part 50.

Ground-level ozone is generally not emitted directly by sources. Rather, emitted oxides of nitrogen (NO_x) and volatile organic compounds (VOC) react in the presence of sunlight, particularly under warm conditions, to form ground-level ozone, as a secondary pollutant, along with other secondary compounds. NO_x and VOC are "ozone precursors." Reduction of peak ground-level ozone concentrations is achieved through controlling VOC and NO_x emissions.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the Clean Air Act (CAA) requires EPA to designate as nonattainment any areas that are violating the

NAAQS, based on the most recent three years of quality-assured ozone monitoring data. The Chicago nonattainment area was designated as a Marginal nonattainment area for the 2008 ozone NAAQS effective July 20, 2012. See 77 FR 34221 (June 11, 2012).

On May 4, 2016 (81 FR 26697), in accordance with section 181(b)(2)(A) of the CAA and the provisions of the SIP Requirements Rule (40 CFR 51.1103), EPA determined that the Chicago nonattainment area failed to attain the 2008 ozone NAAQS by the July 20, 2015, Marginal area nonattainment deadline, and reclassified the area from Marginal to Moderate nonattainment. EPA's determination was based upon three years of complete, quality-assured and certified data for the 2012-2014 time period.

III. What are the criteria for redesignation to attainment?

Section 107(d)(3)(E) of the CAA allows redesignation of a nonattainment area to attainment of the NAAQS provided that:

(1) the Administrator [of EPA] determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission

reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air

- Quality Management Division, September 4, 1992 (the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
 6. "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
 7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
 8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
 9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of the State's request?

EPA is proposing to disapprove Wisconsin's request to redesignate the Wisconsin portion of the Chicago nonattainment area because the nonattainment area continues to violate the 2008 ozone standard based on quality-assured, certified ozone monitoring data for 2015-2017. Preliminary monitoring data for 2018 also indicate that the area continues to violate the 2008 ozone standard. The Chicago nonattainment area fails to meet the critical air quality requirement of section 107(d)(3)(E)(1) of the CAA. The basis for EPA's proposed disapproval of the redesignation request is discussed in more detail below.

A. Has the Chicago area attained the 2008 ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area may be considered to attain the 2008 ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on the most recent three consecutive years of complete, quality-assured air quality data

for all monitoring sites in the area. To attain this standard, the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.075 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). The 2015-2017 ozone monitoring data considered here meet these certification criteria.

As part of the State's August 15, 2016, redesignation request, Wisconsin considered monitoring data for 2013-2015, which showed attainment of the 2008 ozone standard. However, since submittal of the State's redesignation request, quality-assured and certified ozone data have become available for the 2014-2016 and 2015-2017 time periods. These data may not be ignored in the review of Wisconsin's redesignation request.

The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for each monitoring site in the Chicago area are summarized in Table 1.

Table 1. Annual 4th high daily maximum 8-hour ozone concentrations and 3-year average of the 4th high daily maximum 8-hour ozone concentrations for the Chicago area.

County, State	AQS Site ID	2013 4 th highest daily max value	2014 4 th highest daily max value	2015 4 th highest daily max value	2016 4 th highest daily max value	2017 4 th highest daily max value	2013- 2015 design value	2014- 2016 design value	2015- 2017 design value
Cook, IL	17-031-0001	0.064	0.066	0.066	0.075	0.078	0.065	0.069	0.073
	17-031-0032	0.071	0.067	0.066	0.077	0.074	0.068	0.070	0.072
	17-031-0076	0.062	0.067	0.065	0.075	0.078	0.064	0.069	0.072
	17-031-1003	0.066	0.065	0.068	0.075	0.060	0.066	0.069	0.067
	17-031-1601	0.064	0.070	0.066	0.073	0.070	0.066	0.069	0.069
	17-031-3103	0.062	0.063	0.058	0.067	0.061	0.061	0.062	0.062
	17-031-4002	0.063	0.063	0.061	0.076	0.068	0.062	0.066	0.068
	17-031-4007	0.067	0.069	0.068	0.076	0.071	0.068	0.071	0.071
	17-031-4201	0.069	0.068	0.068	0.079	0.070	0.068	0.071	0.072
	17-031-7002	0.069	0.072	0.070	0.076	0.073	0.070	0.072	0.073
DuPage, IL	17-043-6001	0.063	0.064	0.067	0.074	0.069	0.064	0.068	0.07
Kane, IL	17-089-0005	0.064	0.066	0.065	0.074	0.069	0.065	0.068	0.069
Lake, IL	17-097-1007	0.072	0.073	0.070	0.077	0.074	0.071	0.073	0.073
McHenry, IL	17-111-0001	0.065	0.067	0.064	0.073	0.070	0.065	0.068	0.069
Will, IL	17-197-1011	0.061	0.064	0.064	0.064	0.068	0.063	0.064	0.065
Lake, IN	18-089-0022	0.064	0.067	0.064	0.070	0.070	0.065	0.067	0.068
	18-089-0030	0.062	0.065	0.070	N/A	N/A	0.065	N/A	N/A
	18-089-2008	0.069	0.067	0.060	0.068	0.069	0.068	0.065	0.065
Porter, IN	18-127-0024	0.069	0.071	0.066	0.070	0.072	0.068	0.069	0.069
	18-127-0026	0.063	0.067	0.060	0.071	0.077	0.063	0.066	0.069
Kenosha, WI	55-059-0019	0.075	0.076	0.075	0.080	0.079	0.075	0.077	0.078

The most recent 3-year ozone design value, for 2015-2017, is 0.078 ppm,¹ which violates the 2008 ozone NAAQS. This design value demonstrates that the Chicago nonattainment area has not attained the 2008 ozone standard. In addition, preliminary monitoring data for 2018 indicate that the Chicago nonattainment area will continue to violate the standard when that data is

¹ The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

considered. Therefore, Wisconsin's ozone redesignation request fails to meet the first, and most important, criterion for the approval of a redesignation request: attainment of the 2008 ozone standard throughout the entire nonattainment area. For this reason, we propose to disapprove the State's request for redesignation to attainment.

B. Has Wisconsin submitted an approvable ozone maintenance plan and approvable motor vehicle emissions budgets?

To be approvable, an ozone maintenance plan, in part, must demonstrate that the ozone standard will be maintained in the ozone nonattainment area for at least 10 years after EPA approves the state's ozone redesignation request. A critical component of ozone maintenance plans is an ozone attainment emissions inventory documenting the VOC and NO_x emissions inventory for the period in which the area has attained the ozone standard. The ozone maintenance demonstration usually involves the demonstration that future (during the 10 years after redesignation) VOC and NO_x emissions will be at or below the level of emissions that lead to attainment of the standard. Wisconsin's ozone redesignation request purports to contain such an ozone maintenance demonstration; however, because the Chicago area continues to violate the 2008 ozone standard, we cannot conclude that Wisconsin has developed an acceptable attainment year emissions inventory. Absent a demonstration that the

maintenance plan inventory is sufficient to maintain attainment of the standard, EPA may not approve the ozone maintenance demonstration portion of the ozone maintenance plan submitted by the State.

Since the estimation of the VOC and NO_x MVEBs depends on the determination of mobile source emissions that, along with other emissions in the nonattainment area, provide for attainment of the ozone standard, and since the Chicago nonattainment area continues to violate the 2008 ozone standard, we find that Wisconsin's VOC and NO_x MVEBs are also not acceptable.

EPA is proposing to disapprove Wisconsin's maintenance plan and MVEBs for these reasons.

IV. Statutory and executive order reviews.

Executive Orders 12866 and 13563: Regulatory Planning and Review

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely proposes to disapprove state requirements as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Similarly, disapproval of a redesignation request only affects the legal designation of an area under the CAA and does not create any new requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and

the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a state requirement and a redesignation request, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes to disapprove a state requirement and redesignation request.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Oxides
of nitrogen, Ozone, Volatile organic compounds.

Dated: December 20, 2018.

James O. Payne,

Acting Deputy Regional Administrator, Region 5.

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